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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,118	10/08/2003	Natsushi Miura	26H-006	4696

23400 7590 10/30/2006

POSZ LAW GROUP, PLC  
12040 SOUTH LAKES DRIVE  
SUITE 101  
RESTON, VA 20191

EXAMINER

GROSSO, HARRY A

ART UNIT	PAPER NUMBER
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3781

DATE MAILED: 10/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

88

<b>Office Action Summary</b>	Application No. 10/680,118	Applicant(s) MIURA ET AL.	
	Examiner Harry A. Grosso	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 September 2006.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 7 2006 has been entered.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anhegger et al (5,031,302) in view of Berger (3,911,97), Smith (3,334,779), and Goto et al (4,573,694).
2. Anhegger et al discloses a filler neck with a resin neck body (1, Figure 1: 28, Figure 3) and a metal retainer (2, Figure 1, column 2, lines 19-28; 29, Figure 3, column 3, lines 27-32) and a sealing member (21, Figures 1 and 2; 30, Figures 3 and 4) comprising an O-ring disposed between the inner peripheral surface of the neck body and the outer peripheral surface of the retainer.
3. Anhegger et al does not teach how the filler pipe is fixed to a vehicle. Berger discloses a filler neck with a similar insert and further discloses a plate-like flange at the

Art Unit: 3781

end of the filler neck for use in fixing the filler neck directly to a portion of the vehicle (Figures 1 and 2, column 1, lines 61-63). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the flange on the filler neck to fix the filler neck to a vehicle as disclosed by Berger with the filler neck disclosed by Anhegger et al to provide the means for fixing the filler neck to a vehicle. The sealing member of Anhegger et al as modified by Berger would be closer to the fuel tank than the flange.

4. Anhegger et al and Berger do not teach that the portion of the vehicle to which the filler neck is attached is metal. Smith discloses a similar mounting concept as a structure frequently found in automobiles and discloses the body section to which the filler neck is fixed is made of metal and is associated with the exterior of the vehicle which would constitute a side of the vehicle (Figure 1, column 1, lines 61-64). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a metal portion for which the filler neck is fixed to as disclosed by Smith with the filler neck disclosed by Anhegger et al as modified by Berger because it is known that this mounting structure is frequently found in automobiles.

5. Anhegger et al does not teach the use of a fuel cap with gasket ring between the cap and the retainer. Goto et al discloses a filler neck of similar construction with a fuel cap (38) having a gasket ring (46) between the cap and the retainer (Figure 2, column 3, lines 12-18) to provide secure engagement and a fluid-tight seal. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have

incorporated the use of a fuel cap with a gasket ring between the cap and the retainer as disclosed by Goto et al in the filler neck disclosed by Anhegger et al to provide secure engagement and a fluid-tight seal.

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1-5 as related to the combination of Anhegger et al and Bovellan et al have been considered but are moot in view of the new ground(s) of rejection.

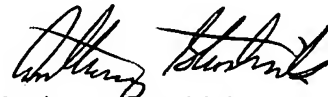
7. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anthony Stashick  
Supervisory Patent Examiner  
Art Unit 3781

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